

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**Research Foundation of the City University of New York
Employer**

- and -

Case No. 2-RC-22721

**Professional Staff Congress/City University of New York
Petitioner**

DECISION AND DIRECTION OF ELECTION

Research Foundation of the City University of New York, herein the Employer, is the fiscal agent for administering all grants and contracts awarded to any unit of CUNY. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all employees employed by Research Foundation at the Graduate Center of CUNY.

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Susannah Ringel, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter¹ and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated and I find that the Employer is a private, not-for-profit, educational corporation, established under the laws of the State of New York with a principal office in New York, New York. The Employer is responsible for the post-award fiscal administration of grants and contracts (sponsored programs) awarded by public and private entities to units of CUNY.² During the twelve months preceding the hearing, the Employer had gross revenues in excess of \$1 million, exclusive of restrictive grounds. During this period, the Employer purchased goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New York.

¹ The briefs filed by the parties have been duly considered.

² CUNY is a public university and, therefore, it is exempt from the Board's jurisdiction under Section 2(2) of the Act.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated and I find that Professional Staff Congress/City University of New York, affiliated with the American Federation of Teachers and American Association of University Professors, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

5. In its petition, Petitioner sought to represent all employees employed by the Employer at the Graduate Center of CUNY.

As evidenced at the hearing and in the briefs, the parties disagree on the classifications included in an appropriate unit. The petition seeks to include doctoral candidates working as research assistants for principal investigators on sponsored programs administered by the Employer.

POSITIONS OF THE PARTIES

The Employer asserts that the research assistants are students within the meaning of *Leland Stanford Junior University*, 214 NLRB 621 (1974) and, therefore, precluded from coverage of the Act. Moreover, because the doctoral candidates on the Employer's payroll extend to various locations throughout the CUNY multi-campus system, the Employer claims that it is inappropriate to carve out one group of graduate students working at the Graduate Center. Instead, the Employer contends that all graduate students on the Employer's payroll should be represented in a single unit. Further, the Employer argues that the groups of employees working at the Graduate Center are so disparate that there is no community of interest between graduate students, employees at various institutes, clericals and childcare center employees. Finally, there are disputed individuals that the Employer claims are professionals, supervisors and managers. The Employer also objects to the inclusion of part time employees in the unit.

The Petitioner, contrary to the Employer, asserts that the petitioned-for unit is an appropriate unit because the single facility presumption, as applied to the Graduate Center, has not been rebutted by the Employer. Further, the Petitioner argues that the doctoral candidates are not "students" of the Employer. The Board held in *Research Foundation of the City of New York*, 337 NLRB 965 (2002), that the Employer is not exempt from the Board's jurisdiction as a political subdivision because it was neither created directly by the state, so as to constitute a department or administrative arm of the government, nor administered by individuals who are responsible to public officials or to the general electorate. Accordingly, the Employer, as contrasted with CUNY, was found to be an employer within the Board's jurisdiction. The Board also rejected the claim that the Employer and CUNY constitute a single employer. *Research Foundation, supra*, at 970-971. In light of the Board's prior finding that the Employer operates independently of CUNY, the Petitioner argues that the employee status of "students" is not raised

before the Board in the instant case, because the Employer does not grant degrees to the employees in issue.

With respect to a broader unit of all graduate students, the Petitioner argues that the working conditions at the other campuses, particularly in the science laboratories, are so different that a grouping of all graduate students is more disparate than a single-location unit at the Graduate Center, albeit in a mixed unit of students and non-students. In that regard, the Petitioner notes that there is no evidence of interchange between employees working at the Graduate Center and employees at the other campuses who are working on sponsored programs administered by the Employer. Further, the Petitioner claims that the graduate students are doing the same work as non-graduate students who are working for the Employer. Indeed, the Petitioner argues that students perform mostly clerical duties and the clericals perform administrative work that is related to the project itself. Finally, the Petitioner argues that part-time employees comprise a significant portion of the petitioned-for unit and share a strong community of interest with the full-time employees.

I have considered the evidence and the arguments presented by the parties on each of these related issues. As discussed below, I find that the petitioned-for unit is an appropriate unit.

To provide a context for my discussion of those issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. Overview of Operations

The relationship between CUNY, the Graduate Center and the Research Foundation is complex because these institutions are at once separate and distinct entities, yet connected through their common purpose. CUNY is a multi-campus, public university located throughout the five boroughs of the City of New York. These include the Graduate Center, ten senior colleges, six community colleges and a law school.

The Graduate Center is the doctoral degree conferring school within the CUNY system and is located at 365 Fifth Avenue, in the former B. Altman Department Store building. The building provides space for the Graduate Center's administrative offices, classrooms for graduate coursework and about thirty research institutes or centers that are often affiliated with academic departments of CUNY.³ The institutes and centers engage in a wide range of research projects, many of which are funded through the Research Foundation. Also housed at the Graduate Center building are: the Mina Rees library; the Martin E. Segal Theatre Centre; CUNY-TV; and, the Child Development and Learning Center.

Some of the graduate programs are conducted as a consortium with CUNY colleges. As an example, CUNY's Ph.D. program in computer science is integrated among departments at multiple campuses with the Graduate Center as the hub for activities. Specifically, the CUNY Institute for Software Design (CISDD)

³ As an example, the Ralph Bunch Institute performs research in international affairs and is associated with CUNY's political science department.

has its offices located at the Graduate Center, but CISDD operates throughout the various campuses to promote CUNY's participation in private industry and public software projects. Similarly, a grant proposal pending with the National Science Foundation (NSF) to research issues associated with traffic sensor networks, is a paradigm of the Graduate Center embedded in the larger CUNY system. The NSF grant contemplates that the principal investigators will be faculty drawn from the computer science, civil engineering and physics departments. The grant will support three graduate students with different areas of expertise: one for visualization algorithms, one for data fusion and one for traffic simulation.⁴

Notwithstanding a smattering of departmental overlap in the graduate programs, the record demonstrates that the Research Foundation administers largely single campus grants. The Research Foundation of CUNY (the Employer herein) is a private, not-for-profit corporation established under the laws of the State of New York. It is responsible for the post-award fiscal administration of all grants and contracts (sponsored programs) awarded to principal investigators by federal agencies and private foundations. See, *Research Foundation*, 337 NLRB No. 152 (2002).⁵ The sponsored programs are not permanent organizations. Each institute, center or program funded through the Employer is independent from one another and in some cases, separately incorporated. Each has its own funding sources, budget and mission which represents a wide range of sponsored research projects. In addition, a number of faculty members perform sponsored research, which is unrelated to the institutes. The record shows, however, that all sponsored research performed at the Graduate Center, regardless of whether it is under the umbrella of various centers or institutes, or overseen by individual faculty, must be coordinated and approved by the Graduate Center.⁶ The directors of various centers and institutes meet as a group at least twice during the school year on matters of common interest.

The relationship between the Employer and CUNY is currently governed by a "1983 Agreement" which specifies, in relevant part, that the Employer employ necessary personnel to conduct the programs "who shall be deemed to be employees of the Foundation and not the University" and establish policies and procedures regarding personnel and equipment. The benefits of being a private corporation, rather than governmental entity, are clear because the Employer is not subject to government civil service requirements or purchasing practices, such as competitive bidding. Exemption from such rules allows the Employer greater flexibility than would be the case if the Employer were an arm of the University.

⁴ The grant money will be funneled through the Research Foundation to pay the graduate students hired to work on the sponsored program.

⁵ While CUNY operates with publicly appropriated funds, the Employer receives no direct tax-levy funds from any appropriating authority or political subdivision. Thus, the legal and fiscal separation of the Employer from the University prevents the commingling of tax-levy funds and sponsored program funds, which come from private and public sources.

⁶ The Employer assigns a grant number to every grant that it administers. The grant number is associated with the principal investigator (PI) who oversees the grant. Thus, if the PI is primarily affiliated with the Graduate Center, then the employees working under that grant are grouped as "Graduate Center" employees on the Employer's payroll.

The Employer obtains operating revenues from fees charged to CUNY for the administrative services that the Employer provides. Although sponsored programs operate largely on CUNY's campuses (for which CUNY is reimbursed), the Employer and CUNY are not administratively integrated. The Employer's central offices (including its human resources, payroll, legal affairs, general accounting, internal audit and systems information services departments) are separate from CUNY's internal operations. The Employer administers its own health and welfare, pension, retirement and annuity funds for all its employees.

According to Wendy Patitucci, director of the Office of Employment Policy and Practice, the Employer has ultimate authority over all labor relations issues concerning employees, students and professors working on sponsored programs. As in the prior *Research Foundation* case, the record here supports a finding that while performing services for CUNY, the Employer, through an independent board of directors and managers, maintains direct and independent control over its employees, management, labor relations, budget and daily operations. The Employer publishes salary guidelines and within each category, employees are paid within that range depending on sponsor requirements. Labor relations policies, such as, sexual harassment policy, time and attendance and annual leave policy, are maintained by the Employer and are applicable to all employees.

II. Research Foundation Employees

The Employer employs about 12,000 employees over the course of a year. Due to the nature of the sponsored research, the workforce fluctuates significantly during the school year. At the time of hearing, about 4,500 employees were on the payroll. The employee classifications range from clerical workers to principal investigators (PI), who are mostly CUNY faculty members. Approximately 200 employees are on the Employer's payroll performing work associated with the Graduate Center and about half of them are graduate students. The record shows that the graduate students employed by the Employer perform a variety of tasks that range from the menial to the intellectually challenging.

A. Research Assistants

Of the nearly 3,800 graduate students registered at the Graduate Center, about one-eighth (approximately 530) of them are working on sponsored programs which are administered by the Employer. Of those, about 113 graduate students perform work at the Graduate Center. The graduate students work alongside non-students on a variety of grants. Both the graduate students and non-students report to approximately sixty different PIs.

The PI administers the sponsored program and is responsible for carrying out the goals of the research grant. Accordingly, the PI hires the research staff and, where the grant is large or complex, the PI also hires administrative or managerial assistants, technicians and clerical support. The PI determines the employees' pay rates. Generally, graduate students earn between \$15-20 per

hour, depending on their level of study.⁷ It appears that the non-student employees receive approximately the same pay rates as graduate student employees.

The record demonstrates that research assistants (RAs), typically doctoral students, are hired to perform administrative tasks that are often unrelated to their dissertations. As an example, Professor Brian Schwartz, the vice-president for research and sponsored programs, testified that he is the dissertation mentor for Hua Feng Xie, a third year graduate student in the physics department, whose dissertation topic is on the physics of finance. Specifically, Xie will develop formulas to price financial instruments, such as, futures and derivatives. Xie will be a research assistant on the Employer's payroll for fifteen hours per week, working for Schwartz as the PI. His job will entail updating information on a website called "Science and the Arts." Schwartz testified that he hired Xie solely to provide financial assistance, as Xie embarks on his dissertation research. Schwartz acknowledged that someone who is not a doctoral student could perform the work. Clearly, the RA position is not in furtherance of Xie's doctoral studies; instead, the project is getting him "extra" money.

Similarly, Dr. Thomas Weiss, presidential professor of political science and director of the Ralph Bunche Institute for International Studies (RBIS), testified that he hires staff largely from the pool of graduate students who have taken his classes in the political science department. While the graduate students perform a variety of functions, the work entails the performance of basic secretarial duties, combined with some fact checking. Thus, it appears that even though the graduate student's career may benefit from networking opportunities, the content of the work is not directly linked to the area of study. Dr. Weiss mentioned one student whose dissertation topic grew out of research on a sponsored program. Apart from clarifying her topic, however, the student had to read a totally different body of theoretical literature to complete her dissertation. Weiss also recalled a psychology student who was working on the index of an oral history - an area far afield from his course of study.

Melissa Tallman, a graduate student at CUNY, is employed by the Employer at the Center for the Study of Philanthropy (CSP), located at the Graduate Center. The CSP contributes to the study of the nature of philanthropy. For instance, the donor research project examines why and how much people donate, as well as, trends in donations of particular groups. Tallman's graduate work, however, is in physical anthropology with a particular interest in human evolution.⁸ While Tallman has the title of research assistant at the CSP, her work involves mostly administrative tasks, such as, photocopying, mass mailings and

⁷ In the normal course of study, the graduate students in their first two years of coursework (Level I) generally get teaching assistant positions. After passing qualifying exams, the graduate students begin specializing and finding a thesis topic and an advisor for their dissertation (Level II). During this period, the student usually receives a package of funding, including scholarships, TA and RA positions. At Level III, having completed the coursework, the student conducts dissertation research.

⁸ Tallman is enrolled in a special program called the NYCEP program (New York Consortium of Evolutionary Primatology), which is a consortium program between CUNY's Graduate Center, New York University and Columbia University. As a result, Tallman takes classes with about sixty students from all three schools, instead of, the anthropology students at CUNY's Graduate Center.

faxing⁹. Tallman testified that students who want to obtain work related to their course of study, must either work in an unpaid internship or in the work-study program paid for with CUNY funds.¹⁰ Tallman took the position with the Employer to earn money. She is classified as a part-time B employee and intends to work over the summer, as well as during the school year. The record indicates that all of the research assistants at the CSP are graduate students, mostly from the history department, and they are classified as part-time B employees.¹¹

Another graduate student, Robert Saute, described his job for the Employer in similar terms, notwithstanding the significant differences in the particular research projects. As a research assistant working under Professor Cynthia Epstein, Saute spends as much time doing clerical work, as he spends doing research. Specifically, Saute's work includes interviewing lawyers, performing secondary source research, reading transcripts, writing short reports and a significant amount of clerical work, such as photocopying, making hotel reservations and tinkering with computer problems. The current sponsored program that he works on deals with career choices in the legal profession. In contrast, Saute's dissertation topic is the historical sociology of the Legal Aid Society, as a case example of the construction of the poverty bar. Further, the sponsored research that he has worked on throughout his employment has varied over time: one project dealt with "glass ceilings" at large, corporate, Wall Street law firms; another looked at how part-time legal work affected issues of work and family. Saute conceded that the practice of writing and researching in the legal profession was helpful academically; however, none of the sponsored research concerned the delivery of legal services to the poor. Epstein's projects had little to do with poverty and the law.

In contrast with the humanities, the record demonstrates that graduate students in the science departments work on various campuses that house laboratories and not at the Graduate Center. They essentially have no interaction with the employees who are working at the Graduate Center. As an example, Dixie Goss, professor and chair of the chemistry department, testified that at Hunter College, there are about forty graduate students in the chemistry program and they conduct their research on the campus where their mentor has research labs, even though, their coursework is completed at the Graduate Center.¹² In that regard, as the PI on a grant from the National Institute of Health, Goss hired between two and four doctoral students as research assistants on a part-time

⁹ Tallman testified that "With the Senior International Fellows Program, I end up doing a lot of the leg work. For instance, lately, I've been trying to track down accommodations for our senior fellows, calling various corporate housing places and trying to house them."

¹⁰ The Union claims that the type of RA positions contemplated by the decisional law as exempt students are graduate assistants covered by the PSC/CUNY CBA. (Pet. Ex 3).

¹¹ Part-time A employees work more than twenty hours per week but less than thirty-five hours per week and receive health care benefits and participate in the Employer's pension plan. Approximately half of the part-time A employees are students. Part-time B employees receive only statutory benefits and about 75% of them are students.

¹² Occasionally, graduate students perform specialized experiments at the Brookhaven National Laboratory.

basis.¹³ Based on her day-to-day supervision of the students, Goss testified that the research the graduate students performed on the sponsored programs is research in furtherance of their dissertations.

This distinction between the sciences and the humanities was further substantiated by Robert Alfano, distinguished professor of science and engineering, who teaches mostly undergraduate courses in physics, but also has taught some special topics for graduate students at the City College campus. Currently, he is the PI for about eleven different grants totaling about four million this year. All of the work done on these grants is performed at the City College campus, instead of the Graduate Center.¹⁴ Alfano testified that the students usually engage in a screening process whereby they visit the lab to see if they would like to carry out their research in this area and find a mentor to support their Ph.D. While some students obtain their Ph.D. working outside his lab, Alfano named a student, Agnes Carpenter, who based her dissertation on her study as an RA in a sponsored program granted by NASA.

B. Other Employee Classifications

Hillary Webb, a graduate student in political theory, is a full-time administrative assistant at the Stanton/Heiskell Center, which is located at the Graduate Center. The main program currently in progress at the Stanton/Heiskell Center is called "Project Stretch" which provides middle school children with computers to improve their academic performance. As an administrative assistant, Webb collects files, manages the office, takes minutes of weekly staff meetings, edits internal documents and helps type grants.

Richard Bruce, who is not a student, is a college assistant at the Center for Advanced Study and Education (CASE), which is located at the Graduate Center. He is presently involved in the Project Ascend McNaire program, which seeks to assist students who are underrepresented within the graduate school community for financial reasons. As a college assistant, the Employer pays Bruce to manage the program's website. He also creates the program guides for CASE sponsored events and verifies that certain students are attending events. In addition, he makes photocopies and runs errands. Bruce testified that his co-worker, Sean Wiley, who is a doctoral student working on the Project Ascend McNaire program, performs the same work that he does on this project.

The Employer states that it considers Bruce a full-time employee because he works thirty-five hours per week, even though his hours are cobbled together through three different grants attributed to CASE. He has worked continuously since 1998. Like all of the unit jobs described at the Graduate Center, his hours are very flexible.

In another variation of muddled titles and creative funding, Kimberly Warner-Cohen works in the Center for Human Environments, which is located at

¹³ Because many students are foreign, their visas allow them to work no more than 19 hours per week; however, Goss maintained that the graduate students generally work additional hours because the research can be used as a basis for their thesis.

¹⁴ Alfano also noted an exception for some students performing research at Bell Telephone labs.

the Graduate Center. A few months after her hire in August 2002, her salary was split between the Employer and CUNY. The Employer pays her for fifteen hours per week as the administrative assistant/office manager under various grant money.¹⁵ CUNY pays her for twenty hours per week to work as a college assistant. She testified that there is no distinction between the work that she performs as a college assistant and the work that she does as an administrative assistant/office manager. Accordingly, irrespective of her title, she maintained that her job is to manage the books, work on the annual report, process payroll, fax and photocopy.

Although she works thirty-five hours a week, the Employer lists her as a part-time B employee. She is the only employee who works thirty-five hours per week at the Center. There are about twenty students who work part-time as research assistants.¹⁶ Four of those students are paid solely by the Employer, through several different grants simultaneously.¹⁷ Further, the Employer also employs Melissa Extein, who is not a student, as a research assistant in the Center for Human Environments.

Matthew Strickler is a college assistant in the Continuing Education and Public Programs Office.¹⁸ He has two sets of duties: (1) office work, which involves handling phone calls and miscellaneous office tasks; and, (2) event work, which requires recording and registering attendees. Although Strickler is a Masters student at the New School University, also located in Manhattan, most of the approximately eight college assistants who work for the Employer in this office performing the same work are CUNY graduate students. Strickler is a part-time B employee with flexible hours.

According to Sebastian Persico, the vice-president for finance and administration at the Graduate Center, there are a number of clericals employed through the Employer who perform clerical functions for the continuing education program, which is not part of the core academic mission of the Graduate Center. These clericals register students, collect money, manage crowds and also perform copying and traditional clerical functions. The Employer also employs other clericals who answer phones, type memos and perform traditional, secretarial functions. The record indicates that there are about thirty-four non-student clericals and eight graduate student clericals on the Employer's payroll.

C. Professional Employees:
The Barry S. Brook Center for Music Research and Documentation

The Barry S. Brook Center for Music Research and Documentation is located in the Graduate Center and affiliated with CUNY's music department. The Brook Center's projects currently include: Repertoire International de Litterature Musicale (RILM); Research Center for Music Iconography (RCMI); Foundation for

¹⁵ Warner-Cohen is paid through one grant at a time. In the past year, she has been paid through six or seven different grants.

¹⁶ The RAs primarily perform work in the field.

¹⁷ There are about ten grants that fund the activities at the Center for Human Environments.

¹⁸ The Employer lists Strickler as a non-student clerical in its payroll records. (Er Ex 10).

Iberian Music; Pergolesi Research Center; Center for the Study of Free-Reed Instruments; French Opera; Music in Gotham; and 18th Century Symphony Archive. While the Brook Center's staff consists almost entirely of volunteers, certain employees who work at RILM and Music in Gotham are in issue in the instant case.

1. RILM

RILM is a New York corporation with its own by-laws and Board of Directors. Established in 1966 under the joint sponsorship of the International Musicological Society and the International Association of Music Libraries, Archives and Documentation Centers, RILM was the pilot project of the interdisciplinary Bibliographic Center. RILM's governing body, the Commission Internationale Mixte, is a group of distinguished scholars and librarians elected by the sponsoring societies. The publication of *RILM Abstracts of Music Literature* is made possible by the efforts of some sixty national committees located in Europe, Asia, Africa, and North and South America. These committees are responsible for sending the citations and abstracts for all significant writings published in their countries, and are typically composed of musicologists and librarians based at major university or national libraries and research institutes.

RILM Abstracts of Music Literature is widely recognized as the world's most important and comprehensive abstracted bibliography on music and related disciplines. It is essentially a professional guide to writings about music, which is published in book form and CD-ROM. RILM's budget is funded primarily by subscriber fees.¹⁹ On a monthly basis, RILM writes a check to the Employer in order to cover the upcoming month's salaries and benefits. The Employer administers the payroll and benefits for the employees at RILM.

RILM's senior staff includes Barbara Dobbs MacKenzie, the editor-in-chief and Zdravko Blazekovic, the executive editor.²⁰ There are about thirty people on the staff. MacKenzie, Blazekovic and James Cowdery, one of the four senior editors, are non-teaching faculty and none of the students who work at RILM engage them as advisors on their dissertations.²¹ The rest of the staff, which consists of editors, associate editors, accessions editors, productions editor and assistant editor, are mostly graduate students in the Music Department at CUNY.²²

As editor-in-chief, MacKenzie handles all labor relations issues, including posting positions and hiring employees. She determines salaries and conducts year-end conferences with employees to review their work. MacKenzie consults with Blazekovic regarding hiring, promotions and salary adjustments. As executive

¹⁹ RILM received a grant to compile a retrospective file for the bibliography; however, for the last decade, RILM's payroll is funded by subscriber fees.

²⁰ The parties stipulated that MacKenzie and Blazekovic are supervisors within the meaning of Section 2(11) of the Act. The record demonstrates that they hire, fire and direct employees.

²¹ The Employer claims that all four senior editors are supervisory employees and, in the alternative, that they are professional employees.

²² The Employer contends that all of these employees are professionals. The Union, in its brief, seems to concede the professional status of the RILM employees even though no stipulation was reached in the record.

editor, Blazekovic fields questions from the editors and all of the assistant editors report to him.

There are four senior editors who perform different work. As mentioned above, James Cowdery is a senior editor and an adjunct faculty member at CUNY. He has a Ph.D. in ethnomusicology. He assists MacKenzie in the hiring process by interviewing applicants and according to his job description, provides “feedback” to MacKenzie regarding the staff. Primarily, he oversees the editorial workflow, which involves tracking the progress of assignments to the editors.

Carl Skoggard trains new editors and, in the process, evaluates and provides “feedback” on the employees to MacKenzie. Skoggard has the final word on editorial issues that arise on a daily basis.

Andre Balog mostly edits, but he also deals with issues concerning the website. According to MacKenzie, he is a widely published musicologist. He is a French language expert and trains and oversees work of the assistant editor on French language materials.²³ His job description states that he has “overall responsibility” for certain classifications and must provide “feedback” to MacKenzie regarding the accessor’s work. He is responsible for the timely submission of the employees’ timesheets.

Finally, Ken Yarmy is a professional musician and the technical expert responsible for the in-house database system. According to MacKenzie, he works closely with the assistant editors, to whom he assigns work and provides training on how to use new database.

The editors perform largely the same work as the senior editors, but focus on different areas of the bibliography, depending on their language specialty and familiarity with the subject area. Their duties include editing, indexing and sometimes writing abstracts of scholarly literature on music received from diverse sources. According to MacKenzie, the editing function requires discretion and judgment all the time. While it appears that some of the editors have more administrative duties than others, MacKenzie did not elaborate on these differences. According to the job descriptions, the editor position requires a BA with three years relevant experience or a graduate degree. Three of the six editors have a Ph.D. in music. Further, the job descriptions for a full-time editor and a part-time editor are similar. In this regard, MacKenzie testified that when she converted from a part-time editor to a full-time editor, there was no change in her duties.

The associate editors all work on a part-time basis and are training to become editors. Although MacKenzie indicated that no one on this level indexes the materials, it appears that the associate editors are the sole first editor on the materials they handle. Further, the job descriptions submitted for “part-time editor” and “part-time associate editor” are similar. The responsibilities differ in that an editor is required to “revise and proofread the work of other editors.”²⁴ Further, the qualifications differ in that the associate editor position requires a BA with only two years experience or relevant graduate work.

²³ Notably, his job description indicates that the first editor may have more subject expertise than he does, so that his role is limited to consistency in indexing, etc.

²⁴ The job descriptions provide that indexing is part of the associate editors’ job duties.

The productions editor, J. Graeme Fullerton, is a Level III graduate student in the music department at CUNY. He is responsible for the production of the print text, using a text layout program. He reports to Yarmey on technical matters.

For policy reasons, RILM tries to exclusively hire graduate students from CUNY for the assistant editor positions.²⁵ While some doctoral students are working on research related to their area of study, the work has not been classified at this level and, therefore, it is difficult to assign based on subject matter. In some cases, the category is clear and the work will be funneled to the student who has an interest in that area. Moreover, MacKenzie noted that the music department is distinct in that at least two of the assistant editors will complete their dissertations with a composition, rather than the traditional form.

The assistant editors are responsible for accurately inputting new entries received from the committees into the RILM database, and classifying each entry according to general musical topics, which requires a certain level of knowledge about music. As an example, Christopher Bruhn, a graduate student, works nine hours a week entering the title, author and publisher of material into the database and checking that this information is accurately maintained by performing internet research. He also classifies the material according to music topic based on his musical knowledge.²⁶ Finally, the assistant editors are generally responsible for translating the title of the material.

MacKenzie described the accessions editor, Lori Rothstein, as an assistant editor "plus." Rothstein logs and tracks the records that are received from each committee and sends acknowledgements to the committees. She also sometimes performs the functions of an assistant editor by keying new entries into the database. She is not a graduate student.

The position of managing editor, most recently held by Risa Freeman, is currently vacant. Freeman was a Level III graduate student. Her duties and responsibilities included working with vendors and on-line subscribers. She also set the royalty pricing. She sat in on interviews, had input in hiring decisions and submitted employees' timesheets. She also purchased supplies and was given check-signing privileges. Presently, it appears that MacKenzie develops royalties and subscriber fees; Andre Balog has the interim authority to forward the timesheets; Ken Yarmey handles vendors; and the office manager deals with subscribers and accounting.

The office manager/subscription manager is Laurice Jackson. She performs all of the in-house accounting, banking and subscriptions. She orders office supplies. Although no one officially reports to her, the assistant editors frequently ask her about complicated documents because she has thirty years experience at RILM and previously performed data entry work. She plays no role in evaluating employees.

The administrative assistant, Michele Smith, reports to MacKenzie and functions as support staff. Her general office duties include word processing, filing, assisting with handling subscriptions, tracking materials that are received and

²⁵ Presently, only one assistant editor is a non-graduate student.

²⁶ On the Employer's Human Resources personnel action form, Christopher Bruhn's payroll title is research assistant. (Er Ex 21).

taking minutes at staff meetings. Occasionally, she gets assignments from Jackson on particular projects. Smith has taken the lead on identifying promising subscriber markets and compiling reports regarding subscriber statistics. She works twenty hours per week.

There is a posted schedule, but employees enjoy flexible hours, which is well suited to the students because of their classwork and examination periods. Research is conducted in their offices, the small library or the journals library.

2. Music in Gotham

Music in Gotham Center is a project funded by a grant from the NEH. The projects' mission is to develop a chronology of musical life in the late 19th century. The project involves identifying literature from that time period, through research by research assistants conducted at various libraries and archives around New York. Based on their research, the research assistants create a summary of the pertinent aspects of each musical review to build the chronology and database.

The Project's two co-directors are Adrienne Fried Block and John Graziano.²⁷ The Employer employs four research assistants who are graduate students working less than twenty-hours per week. While MacKenzie testified that Bruhn is writing his dissertation on music in New York in the late 19th century, which is exactly the topic of Music in Gotham, she also testified that Bruhn is an assistant editor at RILM.²⁸ In that regard, MacKenzie testified that at RILM, he is responsible for incoming foreign materials, particularly German.

18th Century Reading Room

Julie Cunningham is the chief librarian of the Mina Rees Library located at the Graduate Center. Cunningham testified that the 18th Century Reading Room is a special collection of materials on loan through a donation of Charles J. Tanenbaum and Szilvia Szmuk-Tanenbaum. The materials are primarily books, manuscripts and maps from the period around the American Revolution. The donors agreed to loan the collection to CUNY for a period of three years and fund a full renovation of the library's Reading Room in an effort to generate interest among the graduate students. At the end of three years, the donors will evaluate the level of interest and determine whether to permanently donate the collection.

Caroline Fuchs is the special collections librarian.²⁹ Fuchs works part-time, three days a week. She is close to completing her Masters degree in library science. Occasionally, Fuchs travels to the donors' home to examine materials in their collection and select items for the Reading Room. Fuchs catalogued the material and developed a database so that it was searchable. She also identifies pieces in need of preservation. In terms of marketing, Fuchs

²⁷ The parties stipulated to the supervisory status of Block.

²⁸ The Employer claims that Bruhn is a professional employee because he is an assistant editor.

²⁹ The Employer contends that Fuchs is a professional employee. In its brief, the Union appears to concede her professional status and argues instead, that Fuchs is not a supervisor.

developed several pages on the library website that describe the content of the collection and means of accessing the collection. Together with Cunningham, they produced a grand opening with a major exhibit. In addition to invitations to various department heads, Fuchs, in collaboration with Mr. Tannebaum, has given presentations to invited groups.

American Social History Project/Center for Media and Learning

The American Social History Project (ASHP) is a nationally-known team of scholars, educators, and media producers, who work with high school and college faculty in New York City and around the country, seeking to enrich humanities education and build student learning. ASHP is part of the Center for Media and Learning at the Graduate School. It is a non-profit, Section 501(c)(3) corporation created so that ASHP, Inc., can maintain copyrights to all of its materials.³⁰ The Employer employs about twenty people on a part-time and full-time basis at the ASHP.

A program called “Making Connections” has been the flagship of ASHP’s professional development programs. It provides participating schools with challenging, content-rich, multimedia materials for the American studies, English and ESL classroom. The Employer employs several people in this endeavor, including: Joshua Brown, the PI; the project director; the project coordinator and Edith DeGrammont, the office manager.³¹

DeGrammont is the administrator of the project and coordinates all of the employment matters, which is complicated by the mix of funding sources for the employees at ASHP. She handles all of the paperwork, including the timesheets. By letter dated September 12, 2002, Brown requested a pay increase for DeGrammont because her responsibilities had grown as the number of staff and the variety of projects expanded. Brown wrote, “[t]his increase in supervision over the day-to-day employment of [the Center’s] employees, involving three separate, yet dependent lines of funding (tax-levy, grant and commercial) and added to Ms. DeGrammont’s substantial administrative responsibilities, justifies Ms. DeGrammont’s raise in pay.” While Brown used the word “supervision,” it is clear from his testimony that he was referring to her recordkeeping duties with respect to payroll matters. In short, DeGrammont handles the books and purchasing and is a full-time employee.

John Spencer is the associate education director in the “Making Connections Program” at ASHP.³² He works closely with the NYC Department of Education in creating and writing the curriculum on American history. Spencer has a Ph.D. in American history. While he works primarily at 99 Hudson Street, Brown testified that he expects everyone at the downtown location to join the rest of the ASHP staff at the Graduate Center. This move has been delayed because of the logistics, but the planned consolidation is imminent.

Another ASHP project is the “September 11 Digital Archive” which seeks to organize and collect the electronic record of the September 11 attack and its aftermath. Gregory Umbach is the project director.³³ Umbach holds a Ph.D. in history and is an assistant professor in the history department at CUNY. According to the job description, his primary duties include: directing the digital

³⁰ The separate corporation simply protects ASHP’s control over intellectual property; all funding goes through the Employer.

³¹ The Employer claims that DeGrammont is a supervisory employee.

³² The Employer contends that Spencer is a professional employee.

³³ The Employer claims that Umbach is a supervisor and in the alternative, a professional employee.

collection of experiences; supervising the writing and production of online teaching materials; coordinating the work with a collaborative project in Washington, DC; hiring support staff for the project; and fundraising. With respect to hiring, Joshua Brown, executive director of ASHP, testified that while the term “hiring” was used, “its more like consulting with me.” Umbach interviews and recommends applicants that Brown “seriously” considers and in one instance, Brown ultimately hired Dianna Agosta on Umbach’s recommendation.

Ellen Noonan also works for the Employer in the Media Division.³⁴ She is a media producer and an historian. Noonan has a Ph.D. in history and is one of the primary writers on a number of digital programs. She is also one of the most significant people in terms of writing grants. She participates in the general conceptualization or development of different media projects. Brown testified that they work in a collaborative way.

D. Supervisory/Managerial Employees

The Ralph Bunche Institute for International Studies

The Ralph Bunche Institute for International Studies (RBIS) promotes research, graduate training and public education in international affairs and solutions to contemporary global problems. It is loosely affiliated with other centers and special projects involving international studies. All staff jobs are monitored and supervised by the Institute’s director, Thomas G. Weiss. The staff is basically composed of graduate school students in the Ph.D. programs of political science and sociology. Any research required by staff relates to the needs and substance of the individual projects under RBIS and the student staff is not undertaking research immediately related to their Ph.D. dissertation or program research.

At RBIS, Anne Bakalain is the associate director.³⁵ The status of the executive assistants, the associate director and the research associates is in issue.

Zaida Ramirez is a full-time employee whose title is executive assistant to the administrative director, which means that she is the bookkeeper and accountant at the RBIS. Ramirez is not a student at the Graduate Center. Her duties entail monitoring the grant fund accounts, preparing payment requests, and working with other support staff. The job description for this position describes the qualifications as being “a minimum of two years of progressively responsible office experience preferably in a higher education setting... in the financial area. Experience with monitoring of grants and accounting.”

The Employer also employs Alicia Athonvarangkul on a full-time basis to perform administrative work at the RBIS. Weiss testified that she is basically his secretary. She also performs a variety of tasks, such as, proofreading Weiss’ manuscript, organizing conferences, and contacting Weiss while he is traveling regarding any issues that require immediate attention. She is a Master’s degree

³⁴ The Employer claims that Noonan is a professional employee.

³⁵ The parties stipulated as to Bakalain’s supervisory status.

student and she receives free tuition benefits at CUNY because she is working at RBIIS.

Diana Cassells is the associate director of the Ralph Bunche Centenary Commemoration Project, which is a year-long program (2003-2004) to commemorate the 100th birthday of Ralph Bunche, through a series of special projects. Cassells is a graduate student in political science. Her duties on the Centenary Project entail working with the project director on events and activities and acting as a liaison both within the organization and with the UN on joint programs. For example, Weiss instructed Cassells to contact the Centenary Chairs regarding a request from the Director of Exhibits at the UN. According to Weiss, Cassells "is the person who really is on top of all the details." Cassells prepares and services meetings of the Advisory Committee and ensures that the decisions made relating to the Centenary are implemented.

According to the job description, in addition to the duties mentioned above, Cassells was to "work with the project research assistants in maintenance of the project website, brochures, archives, published materials and research needs." The qualifications specify knowledge of international political science and multilateral organizations, especially the UN. The job description states: "knowledge and proficient in foreign languages useful. Knowledge of workperfect, microsoft word, excel and internet a must. Ability to make substantive decisions in absence of project directors or co-chairs."

One of the special projects at RBIIS is "the UN Intellectual History Project" which traces the origin and analyzes the evolution of key ideas about international economic and social development born or nurtured under the UN auspices. The project has two main components: a series of books and a series of oral histories.

Tatiana Carayannis is a full-time research associate for the Intellectual History Project. She is a Level III, Ph.D. student in political science. Weiss testified that she is his "right hand person" and has asked her to be a co-author on one of the volumes in the oral history. Carayannis' dissertation topic is on the Congo and Weiss conceded that Carayannis' work at RBIIS is not directly useful to her own research. Carayannis served on the search committee to fill the vacancy for the administrative director. The search committee was comprised of two of the RBIIS's directors and Carayannis, who was the only staff member to participate in the committee. Weiss further testified that Carayannis "helps supervise the other students who are doing transcripts or... indices or... research to prepare for interviews, etc." Weiss relies on her to inform him of the status of the interviewing process with respect to the oral histories.

According to her job description, the position requires her to "work with the research assistants in the preliminary interview research...and assist the co-directors in their interview process as required; undertake research as required for the oral history interviews; and, represent the secretariat director, project co-directors at meetings, conferences, etc. as required." With respect to qualifications, the position requires, among other things, the "ability to compose and edit text...[and] the ability to work at different tasks at the same time and keep sense of balance under pressure."

Another one of the Centers at RBIS, the Bildner Center for Western Hemisphere Studies (Bildner Center), promotes efforts to study change and development in the Americas. Mauricio Font is the director of the Bildner Center. The Employer employs Christina Bordin³⁶ as the outreach coordinator who takes charge of the office and is Font's "right hand person." Bordin supervises Danielle Xuereb, the website coordinator. Xuereb is a part-time employee and she updates the website events, which involves editing, formatting, and uploading the information. She is an undergraduate student at Hunter College in film studies.

The Office of Development

The Office of Development is the fund-raising arm of the Graduate Center. The Office of Development operates as part of the Graduate Center Foundation, Inc., which is a non-profit corporation. The Foundation Board determines governance and policy decisions of the Office, whose mission is to raise funds, primarily from the private sector, for the financial benefit of the Graduate Center.

The staff consists of about six employees: Peter Tafti, the director, Althea Harewood, the deputy director and, Lawrence Cowen and Sarah Dwyer, the associate directors.³⁷ Two clerical employees support the staff: Shaunice Johnson and Margaret O'Garro.

Tafti is the chief fund-raising official and he reports to the Board. Harewood manages and disburses the Foundation's portfolio in excess of sixteen million dollars. She also tracks gifts and makes sure that donors get the proper gift receipts for tax purposes.

Sebastian Persico, the Graduate Center's vice-president for finance and administration, testified that Cowen is a "generalist" in fund-raising. He is responsible for developing fund-raising proposals to be submitted to corporations, foundations and other private sources for fund-raising support. He has been instrumental in developing trusts and other estate planning instruments for fund-raising purposes. He has a Master's degree in finance. Persico also described Dwyer as a fund-raising "generalist" who takes the lead in making formal presentations to either corporations or high-worth individuals for solicitations. Dwyer has a Bachelor's degree.

Persico testified that it is common practice for Cowen and Dwyer to attend social functions, an academic lecture or a symposium where major donors are invited. Their job is to acquaint themselves with these individuals and encourage them to make the Graduate Center part of their philanthropic efforts. Persico described fund-raising as both a science and an art in that part of the donor cultivation process is to develop a relationship with potential donors,

³⁶ The Employer claims that the parties stipulated that Bordin is a supervisor/manager, however, her name does not appear on Joint Exhibit 1-A or 1-B. .

³⁷ The parties stipulated that Tafti and Harewood are supervisory/managerial employees. However, the supervisory/managerial status of Cowen and Dwyer is in dispute. In the alternative, the Employer claims that they are professional employees.

whereby, an understanding of the donor's interests is translated into a contribution toward particular activities at the Graduate Center.

Further, the Foundation Board makes recommendations to Cowen and Dwyer concerning individuals that should be cultivated for donations. Tafti, Harewood, Cowen and Dwyer attend the full Board meetings at which the Board discusses major fund-raising activities, such as, the Gala, an annual dinner that the Foundation organizes and conducts. At the meetings, Cowen and Dwyer report to the Board concerning major donor prospects that they are actively soliciting. Cowen recommended to the Board that they actively pursue a planned giving program, which was approved and implemented.

According to the job description, the associate director plans, directs and coordinates major solicitations directed toward corporations and foundations. They establish short and long-range strategies for fund-raising goals. They arrange meetings with local business, corporate and foundation representatives to secure gifts and grants.

Finally, Persico testified that both Cowen and Dwyer assign work to the two clericals working in the office, which appears to be purely clerical work. Generally, the clericals answer the phones, type, input data into a specific software package and file. Persico offered vague and conclusory testimony regarding Cowen and Dwyer's involvement in the hiring and evaluations of the clericals.

Martin E. Segal Theatre Center

The Martin E. Segal Theatre Center (MESTC) is a non-profit center for theater, dance and film located in the Graduate Center and affiliated with the Ph.D. program in theater. James Patrick Focarile is the Director of the MESTC and his position is funded by both the Employer and CUNY.³⁸ He oversees all general management, operations, financial and capital projects related to MESTC.

Dr. Frank Henschker, the director of special projects for the MESTC, is employed by the Employer as a full-time employee.³⁹ He has a Ph.D in dramatic arts and has extensive prior experience in the arts. He is responsible for producing, organizing and coordinating all elements related to theater, dance and film and any programs deemed special projects. He coordinates and oversees all staff, students, technicians, consultants, lecturers, speakers and performers associated with or hired for a special project. His role is to help establish the MESTC as a bridge between the professional theater and academia, and between the international and American theater worlds.

Henschker's participation in special projects is "from soup to nuts" according to Focarile. As an example, Henschker worked on programs with the Italian Cultural Institute of New York and the Japan Society to bring certain performances to the US. For these projects, Henschker hired technicians and ushers and any other employees that he deemed necessary for staging the production. As an example of "developing a dialogue with international cultural

³⁸ The parties stipulated to his supervisory status.

³⁹ The Employer claims that Henschker is either a supervisor or a professional employee.

institutions,” Henschker initiated a program called “The Contemporary Theater Abroad” in association with the Gerthe Institute. In addition, he initiated a dialogue with the Austrian Cultural Forum, which resulted in a joint collaboration. Henschker regularly meets with the Artistic Directors of NYC theater companies to explore potential projects.

Greek/Latin Institute and Graduate Center Reading Room Program

Rita Fleischer is the director of two continuing education programs that offer graduate and undergraduate credit-bearing courses in Greek and Latin.⁴⁰ The Institute’s primary partner is Brooklyn College. Fleischer is the liaison with the bursar and financial aid offices at Brooklyn College and the Graduate Center. Fleischer is responsible for promoting the programs, preparing the program budgets, recruiting and registering students and collecting tuition. Hundreds of students participate in the programs annually. Fleischer is solely responsible for hiring and evaluating faculty from various locations to teach the courses. She decides whether to rehire faculty based on her evaluation of their prior performance. She also directs a group of about 10-12 part-time staff employed by the Employer that helps run the programs. Persico describes her as a “one-person show.”

Office of Special Events and Events Planning

The Office of Special Events coordinates and manages special events at the Graduate Center, including commencement, conferences, receptions and dinners. It also rents the facilities to outside organizations, which creates an auxiliary source of revenue for the Graduate Center. The director, Joan Piper Harden, is employed by the Graduate Center.

The assistant director, Anne Kuite, is employed by the Employer and serves as director in Harden’s absence.⁴¹ Kuite manages large conferences and coordinates all of the activities with the security department and custodial services, department. She has authority to purchase supplies, equipment and services necessary in support of an event. Her primary decision-making role comes in emergency situations or where mid-course adjustments are required.

Persico described Kuite as “involved” in hiring, evaluating and training two clerical employees, without further elaboration or specific examples of this process, apart from training the clerical staff to use the new software program. Similarly, Persico stated that Kuite assigns the clericals work, but did not more fully explain the nature or frequency of the assignments. Notably, Kuite’s job description does not reference evaluations or hiring; rather, it states, “trains and coordinates volunteers and/or students for special and academic events.”

CUNY-TV

⁴⁰ The Employer claims that Fleischer is either a supervisor or a professional employee.

⁴¹ The Employer claims that Kuite is a supervisor.

CUNY-TV is a cable channel serving the five boroughs with educational, cultural and public affairs programs. It operates as a non-commercial station. Although CUNY-TV is located within the Graduate Center building, it has no relationship to the doctoral faculty.

Robert Isaacson is the executive director. The Employer employs two employees: Rita Rodin and Brenda Levin.⁴² The other fifty-two staff members are employed by CUNY.⁴³

Rodin works on a part-time basis as the director of media relations for the central administration. She fields phone calls from the public and the media regarding CUNY-TV about programming or advertising. Generally, she relays the inquiry to Isaacson for instructions on how to proceed. It appears that most of her time relates to public relations for the University and only a small fraction of her time is devoted to CUNY-TV. She deals directly with members of the press and the public on behalf of both the University and CUNY-TV. She works mainly at the Central Administration offices at 80th Street and does not have a desk located at CUNY-TV within the Graduate Center building.

Levin works part-time as the development officer for CUNY-TV. As such, she develops strategies on fund-raising and solicits contractual work, donations and grants for CUNY-TV. Together with Isaacson, she helped create the Advisory Board to CUNY-TV. The Board has thirty-five members from the entertainment industry and Levin is the liaison between the Board and Isaacson. Levin makes proposals and recommendations to Isaacson and the Board on key development projects, such as, a corporate membership drive, which they are currently undertaking.

Center for the Study of Philanthropy

The director is Kathleen McCarthy. The co-assistant directors are Eugene Miller and Felinda Mottino.⁴⁴ Barbara Leopold is the faculty and student coordinator, which means that she oversees the work of the research assistants.⁴⁵ There are three research assistants and three administrative/clerical employees. According to Tallman, while Leopold assigns work, interviewed her, and grants time off, Leopold always consults with Miller before making any decisions. Further, Miller generates the work assignments and passes it on to Leopold, who merely doles out the work. Tallman admitted that Leopold talked to her about her hours, where she would be sitting, and the office resources available to assist her in completing her work. Tallman also claimed that Leopold occasionally does some of the same work that she performs.

⁴² The Employer claims that Rodin and Levin are either managers or professional employees.

⁴³ Isaacson admitted that Rodin and Levin are on the Employer's payroll, instead of CUNY's, in order to avoid having these positions in the bargaining unit represented by the Union at CUNY because he considers them "confidential" employees. (Tr. 1027-1032). He also admitted, however, that Rodin does not handle confidential materials for CUNY and does not attend meetings where labor relations for CUNY-TV are discussed. (Tr. 1040).

⁴⁴ The parties stipulated that Miller is a supervisor.

⁴⁵ The Employer contends that Leopold is a supervisor.

Center for Advanced Study in Education (CASE)

As mentioned above, the Project Ascend McNaire program at CASE seeks to assist students who are under-represented within the graduate school community for financial reasons. Richard Bruce testified that as a college assistant at CASE, he reports to Beth Stickney, Thalia Moshoyannis and Victor Strocza.⁴⁶

Stickney runs the “Ph.D. Info Find” website. Strocza runs two websites called “Peer Lead Team Learning Research Program” (PLTL) whereby graduate and undergraduate students assist in teaching programs and an AP Fellows website. While the Employer claims that its payroll designates Strocza as PI on a grant with Theodore Brown, there is no designation in the “functional title” column.

The Child Development and Learning Center

The Child Development and Learning Center (“Learning Center”) is a non-profit New York corporation, which provides a full-day pre-school program located at the Graduate Center. Federal childcare funds are available to provide childcare services for low-income families with a parent who is attending an educational program. The Employer is the fiscal administrator of these funds for CUNY. The Learning Center operates childcare facilities on seventeen campuses throughout the CUNY system and employs about 200 teachers.

Linda Perrotta is the director of the Learning Center’s facility at the Graduate Center. She is an employee of CUNY and holds a higher education officer associate position. She reports to CUNY’s vice-president of student affairs, Matthew Showingood. Perrotta meets monthly with the directors of the other child care facilities operating throughout CUNY campuses to discuss funding and to plan annual teacher conferences. The group is called the Child Care Council at City University. Sandy Anthony Tobias, who works in CUNY’s student affairs office, also attends these monthly meetings, as the liaison between the Learning Center and CUNY.

The Learning Center at the Graduate Center is licensed by the NYC Department of Health to serve twenty-seven children, ages 2 ½ to 6 years old. The facility is comprised of two classrooms, a small library and a big indoor playroom for gross motor skills. The Learning Center facility is protected by a security and camera system, which permits entrance of individuals only after proper identification.

The four teachers who work under Perrotta are funded through the Employer. The facility has two head teachers and two assistant teachers.⁴⁷ Dolores Buonasora, the head teacher for the four and five year old groups, works part-time, twenty hours per week. She holds a Master’s degree and has ten years

⁴⁶ The parties stipulated that Thalia Moshoyannis is a supervisor. The Employer contends that Stickney and Strozak are supervisors.

⁴⁷ The Employer contends that the head teachers supervise the activities of the assistant teachers. Alternatively, the Employer claims that the head teachers are managers. The Employer further claims that all of the employees are professionals.

teaching experience. Amber Johnston, the head teacher in the two and three year old groups, works full-time. She also has a Master's degree and is provisionally certified.⁴⁸ Trina Woolley, the assistant teacher for four and five year old groups, works full-time and is studying for her BA. Cynthia Overo, the assistant teacher in the two and three year old groups, also works full-time and has the same credentials. Neither Woolley nor Overo are certified, provisionally or otherwise.

Perotta works as a teacher in the four and five year-old group, everyday from 1:00 to 6:30 pm. As a result, she has frequent contact with Buonasora and Wolley and bases her evaluations on daily observations of their work. In that regard, while Perotta is responsible for writing the evaluations that are submitted to Human Resources, she gives "heavy weight" to the head teachers' evaluations of the assistant teachers. In the hiring process, Perotta often asks the head teacher to sit in the second interview of the candidate.

Perotta testified that the head teacher is responsible for training and supervising the assistant teacher. For example, she noted that the head teacher might discuss a curriculum and guide the assistant teacher in developing a lesson plan. Further, the head teacher would observe her as she gave the lesson and provide feedback. In that sense, the head teacher evaluates the performance of the assistant teacher.

The head teachers keep anecdotal records and weekly observations of the children from which they produce written reports that are shared with the parents. Frequently, the head teacher is required to submit an evaluation on her observations of the child and, therefore, is influential in determining whether services are approved for the child. Also, the head teacher is involved in strategies used for individual education plans with therapists.

According to the job description and consistent with Perotta's testimony, the head teacher is in charge of creating and implementing the classroom curriculum in accordance with the child oriented philosophy of the program, which strives to encourage social, emotional, cognitive and physical growth. The head teacher assesses the needs of each child and tailors the program to meet those needs. Further, the head teacher must assist the Director in "supervising the teaching support staff" and formulating their evaluations.

When Perotta is out on vacation or sick leave, Dolores Buonasora is in charge. When the head teacher is out, the assistant teacher covers for the whole class.

Finally, the Learning Center at the Graduate Center serves as a lab for faculty and students doing research pertinent to preschool children. As an example, one of the professors in educational psychology (the department right next door) conducted a study on the impact of 9/11 on preschoolers with the Learning Center children as participants. Also, graduate students work on projects

⁴⁸ The qualifications for the head teacher position require either a provisional or permanent NYS certification. To obtain provisional certification, a teacher must have a BA, meet coursework requirements, complete a students teaching program and pass certification exams. During the five-year provisional period, in order to achieve permanent certification, the applicant must have competed two years teaching experience in early childhood education, obtained a Master's degree and pass the NYS Teacher Certification Examinations.

at the Learning Center, such as, a study on children's play and their negotiating skills, which involved taking the children to the developmental psychology suite on the 6th floor. The record does not indicate that the students are paid by the Employer for this research. Further, student interns, who are graduate students in the developmental psychology program, assist the teachers in the Learning Center. However, the record suggests that the student interns are paid by the Graduate Center, rather than by the Employer.

III. Analysis

The issues to be addressed are the scope and composition of the appropriate unit. As noted above, the Petitioner seeks a unit of all employees on the Employer's payroll at the Graduate Center. The Employer has not met its burden of showing that the petitioned-for unit is inappropriate. Further, the various issues raised by the Employer's assertion of professional, supervisory and managerial status with respect to certain employees will be discussed below.

A. Unit Composition - The Graduate Students are not Students of the Employer

The graduate students in issue are not "students" of the Employer; rather, they are graduate students of CUNY, with a few exceptions.⁴⁹ The record demonstrates that the students and the Employer stand in a conventional master-servant relationship, in that the students perform services for the Employer, under its right of control, and in return for payment. Accordingly, the students are statutory employees within the meaning of Section 2(3) of the Act, notwithstanding that they simultaneously are enrolled as students at CUNY. *New York University*, 332 NLRB No. 111 (2000).

The Board previously found, in *Research Foundation, supra*, at 968, that the Employer is not an entity exempt from the Board's jurisdiction. Moreover, the Board found that the Employer and CUNY do not constitute a single employer. *id.* at 969. In the instant case, the Employer has not submitted evidence that contradicts or varies the facts established in the prior case regarding single employer status. Indeed, the "1983 Agreement" relied on by the Board in the prior case is still the governing document that defines the relationship between the Employer and CUNY.

Four criteria determine whether a single employer relationship exists: (1) common ownership; (2) common management; (3) functional interrelation of operations; and (4) centralized control of labor relations. It is well established that not all of these criteria need to be present to establish single employer status. Single employer status ultimately depends on all the circumstances of a case and is characterized by the absence of an arms-length relationship found among unintegrated companies. The Board has generally held that the critical factor is centralized control over labor relations.

⁴⁹ For example, Matthew Strickler attends the Masters program at the New School University; Caroline Fuchs is obtaining her Masters degree from St. John's University; and John Oakes is a Ph.D. candidate at Columbia University.

The record demonstrates that the Employer is a not-for-profit corporation, while CUNY is a public university. The Employer was created by private individuals and not by CUNY. There is no evidence of common ownership or common management. Further, the Employer's labor relations are independently administered by the Employer. Benefits for the Employer's employees, including health and retirement plans, are determined by the Employer and not by CUNY. The two employers have separate payroll operations. The ultimate authority over all labor relations issues concerning sponsored programs is vested in the Employer's Office of Employment Policy and Practice. The record, therefore, does not reveal the existence of centralized control of labor relations.

With respect to functional interrelation of operations, the Board, in the prior case, found that "while the Employer provides a necessary function for CUNY pursuant to its contractual commitments, the evidence does not demonstrate the presence of substantial interrelated operations between the Employer and CUNY." *Research Foundation, supra*, at 970. In the instant case, the Employer argues that while not a single employer, the common and shared educational purposes of the Employer and CUNY, transforms the Employer into an institution that is academic in nature. As in the prior case, the record does not support this proposition. Rather, the Employer primarily provides administrative and not academic services to CUNY.

The Employer's reliance on the Decision and Direction of Election that issued in Case Nos. 3-RC-11184 and 3-RC-11313, is misplaced. In those cases, the Regional Director found that the employer was a non-profit educational corporation, which was chartered by New York State law and the New York Board of Regents. The decisions did not address whether the employer was an exempt entity or a single employer with SUNY. In the instant case, the relationship between the Employer and CUNY is distinguishable for the reasons set forth in the 1983 Agreement, and as found by the Board in its *Research Foundation* decision.

Based on the above, the record demonstrates that the graduate students working for the Employer at the Graduate Center are employees within the meaning of the Act and not students.

B. Alternatively, the Graduate Students Employed as RAs Are Not Performing Work in Furtherance of their Studies:

In the alternative, even if I were to find that the operations of Employer and CUNY are so functionally interrelated that the Employer is academic in nature, there is no basis to deny collective-bargaining rights to the students on the Employer's payroll at the Graduate Center merely because they are employed by an educational institution in which they are enrolled as students.⁵⁰

The Employer argues that the research assistants in the instant case are not employees because they are engaged in research as a means of pursuing their

⁵⁰ The Employer argues that the Board should return to the standard set forth in *St. Clare's Hospital*, 229 NLRB 1000 (1977), "where bargaining obligations should not be injected into the relationship between a student and an institution which is predicated upon a mutual interest in the advancement of the student's education, and thus academic in nature." (Er's brief p. 88).

academic advancement. The Employer relies, in relevant part, on *New York University*, 332 NLRB No. 111 (2000), wherein the Board affirmed the Regional Director's decision to exclude certain research assistants from the unit. In that case, a few research assistants in the sciences, funded by external grants, were excluded from the unit because these individuals had no expectations placed upon them, other than their academic advancement, which involved research. The research assistants in the sciences were performing research on their dissertation topics, as opposed to being required to perform specific research tasks. The funding, therefore, was more akin to a scholarship. Accordingly, the research assistants in *NYU* were not excluded from coverage of the Act because they were students, but because they did not perform a service for an employer.

In the instant case, the record shows that the graduate students employed by the Employer at the Graduate Center are not performing work related to their graduate studies or doctoral thesis. Schwartz admitted that he hired Xie to provide him with financial assistance and not because the work required a doctoral student's credentials. Weiss testified that the graduate students employed at RBIS perform basic secretarial work combined with some fact checking. MacKenzie acknowledged that any correlation between the work and a student's dissertation area was purely fortuitous. Tallman testified that her work involves mostly administrative tasks, such as, photocopying, mass mailings and faxing. Saute corroborated that he spends as much time doing clerical work, as he spends doing research. The graduate students do not perform work under the supervision of their thesis advisors, and in most instances, their work is unrelated to their area of study. In sum, the research assistants generally assisted the faculty members with their research in an administrative manner, such as checking references, doing bibliographic work, proofreading, entering data into computers, performing archival work, xeroxing materials and other related work.⁵¹

The fact that this is work in exchange for pay and not solely the pursuit of education, is highlighted by the absence of any academic credit for employment with the Employer. Indeed, it is undisputed that working as a research assistant for the Employer is not a requirement for obtaining a graduate degree in most departments. In that regard, of the nearly 3,800 graduate students registered at the Graduate Center, only about one-eighth of them are working on sponsored programs administered by the Employer.

Accordingly, the policy implications raised by *New York University* are not present in this case.

C. Unit Scope - Single Location Facility Presumptively Appropriate:

The Act does not require that the petitioned-for unit be the only appropriate unit, the most appropriate unit, or what could become the ultimate unit; it requires only that the unit is "appropriate." See e.g., *Overnight Transportation*

⁵¹ The record indicates that in the science departments, however, the research that the graduate students performed on the sponsored programs is research in furtherance of their dissertations. Goss and Alfano gave specific examples of dissertation topics based on the research conducted in sponsored programs. The record further demonstrates that scientific research is not conducted at the Graduate Center.

Co., 322 NLRB 723 (1996). In regard to unit scope, the Board has long held that a single location is presumptively appropriate. See, e.g., *Huckleberry Youth Programs*, 326 NLRB No. 127 (1998); *Hegins Corp.*, 255 NLRB 160 (1981); *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980); *Cornell University*, 183 NLRB 329 (1970); *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). This presumption, however, is rebuttable. *J & L Plate*, 310 NLRB 429 (1993).

The general rule is that a single-plant unit is presumptively appropriate, unless the employees at the plant have been merged into a more comprehensive unit by bargaining history, or the plant has been so integrated with the employees in another plant as to cause their single-plant unit to lose its separate identity. *Cargel, Inc.*, 336 NLRB No. 118 (2001); *New Britain Transportation Co.*, 330 NLRB 397 (1999).

In *Cornell University*, 183 NLRB 329 (1970), the Board held that in the educational setting, it would continue to look to factors it had long considered in the industrial setting where an employer operates more than one facility. Those factors are: centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any.

Applying these principles from *Cornell* to the facts in the instant case leads to the conclusion that the petitioned-for unit is an appropriate unit for purposes of collective bargaining.

Local Autonomy

While the Employer has common personnel policies that apply to all sponsored programs regardless of location, the record establishes that PIs retain significant local autonomy in regard to hiring, firing, directing and disciplining employees. Further, within the salary ranges established by the Employer, PIs have substantial independent discretion to grant promotions and wage increases. As the Employer has stated, each grant is a “universe” unto itself.

Moreover, the evidence does not indicate that there is significant interchange among employees working on sponsored programs, either at the Graduate Center or between the campuses apparently as a result of this compartmentalization. To the contrary, each Institute, Center and sponsored program is independently operated with negligible overlap in content or mission. For example, the affiliation between the Bildner Center and the Ralph Bunche Institute appears to be historical and operationally meaningless. While they occasionally share administrative support, there is a separate budget and separate hiring. Apart from an isolated instance of “lending” an employee in an emergency situation, no evidence of employee interchange was presented. Similarly, among the various campuses, there does not appear to be any employee contact.

Commonality of Skills and Interchange

The record shows that there is commonality of skills, functions and working conditions among the employees who are employed at the Graduate Center. Within the Institutes/Centers, there is an overarching mission that links the various projects. As an example, the American Social History Project/Center for Media and Learning (ASHP/CML) aims to revitalize interest in history. While

the specific four projects funded by the Employer are diverse, the overall function of ASHP/CML is to teach history.⁵² Accordingly, there is some evidence of employees moving between projects at particular Institutes/Centers because the work is similar. As an example, Christopher Bruhn appears to work at both RILM and Music in Gotham, which are programs operated at the Barry S. Brook Center for Music Research located at the Graduate Center. Similarly, Richard Bruce and Hillary Webb testified that they worked at the Stanton/Heiskell Center and projects at CASE simultaneously.⁵³

The record demonstrates that the employees at the Graduate Center are doing largely administrative work, irrespective of their titles. In that regard, the duties of the graduate students are not significantly different from those of other employees in the petitioned for unit. Hillary Webb, who is a graduate student, collects files, manages the office, takes minutes of meetings, edits internal documents and helps write grants in her position as an administrative assistant. Michele Smith, a non-student, also has Webb's title - administrative assistant - and performs general office duties. Kimberly Warner-Cohen, a non-student, manages the office and is the bookkeeper, under the hybrid title of administrative assistant/office manager. Laurice Jackson, a non-student, is the office manager/subscription manager, and is responsible for accounting, banking, subscriptions and generally, managing the office. Zaida Ramirez, the executive assistant to the administrative director, is a bookkeeper and accountant. Alicia Athonvarangkul, who is also an executive assistant, works basically as the director's secretary performing a variety of tasks, such as, proofreading and organizing conferences. Similarly, Richard Bruce, a non-student, is a college assistant who manages a website. Danielle Xuereb, an undergraduate student, is also a website coordinator. She updates, edits, formats and uploads information on the website. Matthew Strickler, who is classified as both a non-student clerical and a college assistant, performs office work and event work. These examples illustrate that graduate students, undergraduate students, students at other institutions and non-students perform similar administrative tasks in support of the sponsored program's mission.

Accordingly, the graduate students in the instant case have a significantly greater community of interest with the other employees with whom they work, than with the graduate students employed on other campuses. Indeed, the only graduate students performing sponsored research on other campuses about whom testimony was adduced, were working in various scientific labs, or working outside of CUNY altogether, performing work in furtherance of their studies.

Further, the record indicates shared working conditions at the Graduate Center through the use of the cafeteria, the wellness center, the supply room, the room reservation service and information resources, which are services provided to employees throughout the building. Notably, the record does not indicate that

⁵² The four projects funded by the Employer are: Making Connections (professional development for teachers), New Media Classroom (integration of new media into curriculums), Virtual New York (searchable database for Old York Library collection) and the September 11 Digital Archive.

⁵³ The job postings for positions with the Employer at the Graduate Center are sent to all of the Institutes/Centers in the building.

these services are unavailable to the four employees employed by the Employer at the Learning Center.

Geographic Proximity

It appears that the Employer employs employees at several of the CUNY campuses, which are scattered throughout the five boroughs of New York City. No record evidence was adduced regarding the bargaining history of the parties.⁵⁴

Based on all of the above, the Employer presented no evidence of employee interchange among graduate students at various campuses and as such has failed to rebut the single-location presumption. Instead, the similarity of skills, functions and working conditions among the employees at the Graduate Center are clear: the employees in the petitioned-for unit perform mostly administrative and clerical functions under the local discretion and control of Pls. With respect to the Learning Center employees, the record indicates that it exists to support the overall body of graduate students who have pre-school children and is also linked to the Graduate Center because it serves as a case study for faculty and students performing research in educational psychology for pre-school children. Accordingly, the petitioned-for unit is appropriate for collective bargaining.

D. Temporary Employees

The Employer's argument that the research assistants are temporary employees and therefore, should be excluded from the bargaining unit must be rejected. The Employer relies, in part, on the Personnel Action Form that each employee signs which acknowledges that their employment is subject to availability of funds. Under established Board law, the determination of whether students or other part-time employees are entitled to collective-bargaining representation depends upon whether the nature of their employment gives them a sufficient interest in wages, hours and other working conditions to justify representation. In the instant case, the record does not support that the unit work is casual, intermittent or sporadic. The marked reduction in the Employer's payroll from May to June 2003 may reflect the cessation of work during the summer break, rather than a precipitous drop in funding. While some of the positions were scheduled to end by December 2003, the evidence shows that employees continue on the Employer's payroll through various funding sources. For example, Warner-Cohen was paid through six or seven grants in one year; Bruce is a full-time employee paid through three different grants and he has worked continuously since 1998. Further, some positions are funded by both the Employer and CUNY, as is the case with James Patrick Focarile. Based on the fluidity of funding established in the record, it would be impossible to identify those employees whose employment ended on a "date certain" merely because a particular grant expired. *Caribbean Communications Corp.*, 309 NLRB 712 (1992).

E. Part-time Employees v. Full-Time Employees

⁵⁴ Having found that CUNY and the Employer are not a single employer, the bargaining history between CUNY and the Union is irrelevant to the instant case.

The Employer's contention that part-time employees should be excluded from the unit because they do not share a community of interest with the full-time employees, does not withstand scrutiny. The record indicates that the supervision, duties, work environment and wages of the part-time and full-time employees are the same. In fact, the record shows that some employees who are classified as part-time actually work full-time, but are paid under two separate payrolls, i.e. Warner-Cohen works thirty-five hours per week and is classified as a part-time B employee. Moreover, the unit appears to be mostly part-time, either by designation or in fact. In that regard, Goss testified that because many students are foreign, their visas allow them to work no more than 19 hours per week. Based on the foregoing, the research assistants are not temporary employees and the part-time A and B employees share a community of interests with the unit employees

F. Employees Alleged to be Professional Employees

Section 2(12) of the Act defines a "professional employee" as:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

As set forth above, Section 2(12) defines a professional employee in terms of the work the employee performs, and it is the work rather than individual qualifications, which is controlling under that section. *Aeronca, Inc.*, 221 NLRB 326 (1975). Thus, although the background of an individual is relevant to a determination of whether they possess "knowledge of an advanced type," it is not the individual's qualifications, but the character of the work required that is determinative of professional status. *The Express-News Corporation*, 223 NLRB 627 (1976).

With respect to Caroline Fuchs, the record indicates that she works for the Employer on a part-time basis while she is finishing her Masters degree. It appears that Fuchs works in collaboration with the chief librarian Julie

Cunningham, but the record neither elaborates on the employment structure of the Mina Rees Library, nor Fuch's role in the collaborative process. While it appears that Fuchs exercises independent judgment in the selection of the materials for the special collection, the record evidence is insufficient to make a determination as to her professional status.⁵⁵

With respect to the Employer's assertion in its brief that Mark Bobrow, Rhonda Johnson, Daisy Edmondson-Alter and Carol Ann Finkelstein are professional employees, the record evidence is insufficient to make a determination as to their professional status.

G. Employees Alleged to be Supervisory Employees

It is well established that a party seeking to exclude an individual or group of employees based upon their status as supervisory employees bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 121 S. Ct. 1861, 1866-1867 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *Alois Box Co., Inc.*, 326 NLRB 1177 (1998). Thus, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, we will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Further, the Board has cautioned that in construing the supervisory exemption, it should refrain from construing supervisory status "too broadly" because the inevitable consequence of such a construction is to remove the individual from the protections of the Act. *Northcrest Nursing Home*, 313 NLRB 491 (1993); *Phelps Community Center*, *supra*, at 492 (1989). When evidence is inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established on the basis of those indicia. *Id.* at 490.

Applying the foregoing standards to the facts of this case, with respect to the employees at RBIIS, it does not appear that apart from the stipulated supervisors, Thomas G. Weiss, Ann Bakalain and Cristina Bordin, that the other employees are supervisory.⁵⁶ Diana Cassells is a graduate student who is working on a centenary commemoration of Ralph Bunche through a series of special projects. While her job description suggests that she has some authority over the research assistants, no record evidence was adduced regarding the nature or exercise of that authority. Here, the Employer's contentions are only conclusory assertions without supporting facts or elaboration. Accordingly, these assertions without more evidence do not establish that Cassells possesses any Section 2(11) authority. *The Bakersfield Californian*, 316 NLRB 1211 (1995).

⁵⁵ In its brief, the Union references Er exhibit 15, the admission of which it objected to, and claims that it is contesting the professional status of only six employees listed in that exhibit. Absent a stipulation by the parties as to the professional status of the employees in issue, I am constrained to decide their status based on the record evidence.

⁵⁶ In its brief, the Union claims that Zaida Ramirez is not a supervisory or managerial employee. The Employer does not appear to allege her to be anything other than a bookkeeper/accountant. Accordingly, I find that Ramirez is an employee and is eligible to vote.

Further, the Employer contends that Tatiana Carayannis, a full-time research associate and a graduate student, is a supervisor. The fact that Weiss relies on her as his “right hand person” is clear from the record. However, his claim, unsupported by evidence that she “helps supervise” the other students who conduct interviews for the oral histories, is insufficient to find supervisory status. The Board, in *First Western Building Services*, 309 NLRB 591, 601 (1992), held that instructions given by a more experienced employee to a less experienced employee is not “responsible direction of employees” within the meaning of Section 2(11) because the use of independent judgment is not involved; rather, it is the authority of a skilled employee over an unskilled employee.

As with every supervisory indicium, assignment of work must be done with independent judgment before it is considered to be supervisory under Section 2(11) of the Act. Thus, the Board distinguished between routine direction or assignments of work and that which requires the use of independent judgment. *Laborers International Union of North America, Local 872*, 326 NLRB No. 56 (1998); *Azusa Ranch Market*, 321 NLRB 811 (1996); *Providence Hospital*, 320 NLRB 717, 727 (1996). The Board has held that only supervisory personnel “vested with genuine management prerogatives should be considered supervisors, not straw bosses, lead men, setup men and other minor supervisory employees.” *Ten Broeck Commons*, 320 NLRB 806, 809 (1996).

Based on the record, any assignments made by Carayannis were minimal and routine in nature and did not require the exercise of any independent judgment. Therefore, I find that the Employer has not satisfied its burden to establish that Carayannis is a supervisor within the meaning of Section 2(11). The Employer failed to provide any details regarding how often she assigns work. The fact that Carayannis may act as a lead person does not confer supervisory authority on her. *Brown & Root, Inc.* 314 NLRB 19 (1994). Finally, her participation as a student representative in the search committee to fill a vacancy for the administrative director is insufficient to find supervisory status.

With respect to Barbara Leopold, the Employer asserts that as the faculty and student coordinator, she is a supervisor at the Center for the Study of Philanthropy. It appears that there are about six employees at the Center, which is headed by Kathleen McCarthy with two co-directors.⁵⁷ Overall, the evidence indicates that Leopold makes routine assignments. As discussed above, the record is insufficient to determine that Leopold’s authority requires the exercise of independent judgment, necessary for finding that the employee is excluded from coverage of the Act as a supervisor. *Beverly Health & Rehab. Servs., Inc.*, 335 NLRB 635 (2001); *Ellenville Handle Works, Inc.*, 142 NLRB 787 (1963), *enfd.* 331 F.2d 564 (2d. Cir. 1964).

H. Employees Alleged to be Supervisory or Professional Employees

⁵⁷ One of the co-directors, Eugene Miller is a stipulated supervisor.

With respect to the employees at RILM, the evidence indicates that of the four senior editors, only James Cowdery participates in the hiring process and oversees the editorial workflow, which involves tracking the progress of assignments to the editors. Cowdery, like MacKenzie and Blazekovic, is part of the non-teaching faculty at CUNY. Skoggard, Balog and Yarmy mostly edit certain classifications for which they are ultimately responsible. While MacKenzie claimed that she seriously considers their “feedback” on employees, no evidence was adduced as to specific examples where the “feedback” was incorporated into employee evaluations or that it formed the basis for an employee’s pay increase or promotion. Further, the record does not support that the assignment of work is anything other than routine. The evidence supports that Cowdery participates significantly in the hiring process and monitors the employees’ work. Accordingly, I find that Cowdery is a supervisor within the meaning of Section 2(11) of the Act. While the record indicates that the other senior editors are “responsible for” the work, the record here is insufficient to find that they responsibly direct the unit work. *Endicott Johnson Corp.*, 67 NLRB 1342, 1347 (1946); *NLRB v. KDFW-TV, Inc.*, 790 F.2d 1273, 1278 (5th Cir. 1986).

With respect to the professional status of the senior editors and the editors, it appears that the editors perform largely the same work as the senior editors, but focus on different areas depending on their language specialty and subject area. Three of the six editors have a doctorate in music; none of the three senior editors have a Ph.D. Their duties include editing, indexing and sometimes writing abstracts for the bibliography. It appears that the indexing function requires knowledge of an advanced type, irrespective of the personal qualifications of each individual. Accordingly, I find that Skoggard, Balog, Yarmy and the editors are professionals within the meaning of Section 2(12) of the Act.

The associate editors work on a part-time basis, and while the work itself appears to be similar to the editors, the record is unclear regarding whether they are required to index the material. According to MacKenzie, the editing function requires discretion and judgment all the time. However, the record contains little elaboration on the nature of the work, except that the associate editors have to learn and apply detailed editorial rules and apply judgment and discretion in editing. As the title suggests, the productions editor is responsible for the production of the print text. The assistant editors are mostly graduate students in the music department who input data into the RILM database. The accessions editor tracks the records received and sometimes keys new entries into the database. Laurice Jackson and Michele Smith provide clerical support for the staff.

The evidence indicates that the employees in the editorial department perform substantially the same type of work and their duties are closely related. Although judgment and discretion are involved in the work, much of the data entry appears to be routine. The Employer’s requirement that its employees have advanced degrees or experience in the field of music is persuasive evidence that the employees are “professionals” but such evidence is not conclusive. Thus, while the staff appears to have certain areas of expertise and specialization, the editing function does not require knowledge of an advanced type. Accordingly,

though the work may be challenging, it does not meet the requirements of Section 2 (12)(a)(iv), as set forth above. *The Express-News Corporation, supra*. The parties stipulated that MacKenzie and Blazekovic are supervisors and should be excluded. I find that Cowerdy who also supervises the group of about twenty-four workers, should also be excluded as a statutory supervisor.⁵⁸ *Austin Co.*, 77 NLRB 938, 943 n. 12 (1948); *Beverly Enters. V. NLRB*, 148 F.3d 1042, 1047 (8th Cir. 1998). Finally, I find that Skoggard, Balog, Yarmy and the editors are professionals within the meaning of Section 2(12) of the Act.

With respect to the employees at the ASHP/CML, about twenty people are employed on a part-time and full-time basis. For the “Making Connections” program, Joshua Brown is the PI and it appears that there is also a project director and project coordinator. Edith DeGrammont is the project administrator who handles payroll matters, bookkeeping and purchasing. Apart from a letter that claims DeGrammont “supervises” employees, the record is devoid of any evidence that DeGrammont is involved in hiring, firing or directing the work of the employees. Accordingly, I find that DeGrammont is not a supervisor within the meaning of Section 2(11) of the Act and the record evidence does not establish that she is a professional employee within the meaning of Section 2(12) of the Act.

John Spencer is the associate education director who creates and writes the curriculum on American history for the program.⁵⁹ He holds a Ph.D. in history. Accordingly, the evidence supports that Spencer is performing duties and responsibilities that are predominantly intellectual in character, require independent judgment and knowledge of an advanced type in the educational field of study and, therefore, he is a professional within the meaning of Section 2(12) of the Act. The record evidence is insufficient to determine his supervisory status.

For the “September 11 Digital Archive” program, Gregory Umbach is the project director. Umbach is a Ph.D. and an assistant professor of history at CUNY. The record suggests that the project is collaborative with a group in Washington, D.C., however, Umbach seems ultimately responsible for the collection of materials in NY. While somewhat equivocal, Brown testified that he hired Umbach’s assistant based on his recommendation. Based on Brown’s testimony that Umbach’s role in hiring was more akin to consultation, I find that Umbach is not a supervisor. However, the nature of the work and his credentials indicate that he is a professional employee within the meaning of Section 2(12) of the Act.

Finally, Ellen Noonan is a media producer and historian with a Ph.D. in history. She is the primary writer on several projects. It appears that Noonan’s work is professional in nature as set for in Section 2(12) of the Act. The record evidence is insufficient to determine her supervisory status.

With respect to the Learning Center, the two head teachers, Buonasora and Johnston both hold Masters degrees and are certified by NY state. The record shows that the head teachers develop a curriculum for the class and contribute to evaluations of the child with respect to possible learning difficulties or disabilities.

⁵⁸ With respect to John Graziano, assuming that the Employer claims he is a supervisor, the record evidence is insufficient to make a determination.

⁵⁹ The parties stipulated that the co-director of education, Eliza Fabillar, is a supervisory/managerial employee.

The record indicates that the head teachers are “in charge” when Perrotta is absent; however, the scope of the authority given to the head teachers is unclear. Further, while the head teachers informally evaluate the assistant teachers, it is unclear that these evaluations have impacted their employment status. Accordingly, I find that the head teachers are professional within the meaning of Section 2(12) of the Act, but the record is insufficient to determine their supervisory status.

Finally, the two assistant teachers, Wooley and Overo, are not certified and are undergraduate students presumably studying early childhood education. Because they do not possess knowledge of an advanced type, they do not fulfill the requirements of Section 2(12) and I find that they are not professional employees.

I. Employees Alleged to be Supervisory and/or Managerial Employees or Professional Employees

The Board defines managerial employees:

as those who “formulate and effectuate management policies by expressing and making operative the decision of the their employer” ...These employees are “much higher in the managerial structure” than those explicitly mentioned by Congress, which “regarded [then] as so clearly outside the Act that no specific exclusionary provision was thought necessary” ... Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management...Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interest by taking or recommending discretionary actions that effectively control or implement employer policy.

NLRB v. Yeshiva University, 444 U.S. 672, 682-683 (1980) (citations omitted). The Board has recognized that employees whose decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee's activities fall outside the scope of the duties routinely performed by similarly situated professionals will he be found aligned with management. The party asserting managerial status bears the burden of proof. *Allstate Insurance Co.*, 332 NLRB 759, 759 fn. 2 (2000).

The Employer contends that Lawrence Cowen and Sarah Dwyer are supervisory and managerial employees who are also professionals. Cowen and Dwyer work in the Office of Development, which is the fundraising arm of the Graduate Center. The rest of the staff is composed of Tafti and Harewood, who are stipulated supervisors/managers, and two clerical employees. That all four employees supervise two clericals cannot seriously be considered. I further conclude that Cowen and Dwyer are not professional employees because it does not appear that either meets the criteria of Section 2(12)(a)(iv) requiring knowledge

of an advanced type. Indeed, Persico described them both as “generalists” in fundraising. With respect to their managerial status, while they attend full Board meetings, the evidence indicates that they merely report on their activities and prospective donors.⁶⁰ In that regard, it appears that they report to Tafti on a regular basis, as the chief fundraising official, and he reports to the Board. The record does not demonstrate that they have substantial input regarding management strategy. Instead, it appears that their primary duties are to attend social and academic functions to secure gifts. *Progress Industries*, 285 NLRB 694 (1987). Accordingly, the evidence does not support that they are so firmly aligned with management so as to preclude them from the protections of the Act.

The Employer contends that Rita Fleischer is a supervisor/manager and professional employee. Fleischer is a “one-person show” in charge of directing and coordinating two continuing education programs. She is solely responsible for hiring and evaluating the faculty to teach the courses. She also directs the work of about 10-12 part-time staff hired to assist in running the two programs. Accordingly, she is a supervisor within the meaning of Section 2(11).

The Employer contends that Beth Stickney and Victor Stozak are supervisory/managerial and professional employees. According to Richard Bruce, Stickney and Stozak are the PIs on grants wherein he was hired to manage the website and they direct his work. As the record demonstrates that PIs hire and fire employees, I can conclude that Stickney and Stozak are supervisors within the meaning of Section 2(11) of the Act.

⁶⁰ Further, the record is unclear as to the frequency of full Board meetings.

J. Employees Alleged to be Managerial Employees

Hentchker holds a Ph.D. in dramatic arts and is responsible for producing, organizing and coordinating special events at the Martin E. Segal Theatre Center. He engages in work that is predominantly intellectual involving the exercise of discretion. As the director for special projects, his role is to establish the theater as a bridge to the professional and international theater worlds. As such, he represents management interests by taking discretionary actions with respect to the independent contractors hired to stage a production and regarding collaboration with foreign organizations. *Boston University*, 281 NLRB 798 (1986), *enfd.* 835 F.2d 399 (1st Cir. 1987). Accordingly, I find that Hentchker is a managerial employee.

At CUNY-TV, Rita Rodin works as the director of media relations. It appears that although paid by the Employer for her work at CUNY TV, she is also responsible to the vice chancellor for University relations. Her office is located at the Central Administration offices on 80th Street and her contact with CUNY-TV appears to be limited to communications with the executive director Robert Isaacson. While the record does not reveal the level of discretion or judgment Rodin exercises in performing her work for the vice chancellor, Isaacson closely supervises any inquiries that she fields regarding CUNY-TV. Accordingly, the record is insufficient to conclude that Rodin is a professional or managerial employee, however, the evidence also calls into question whether she shares any community of interest with the petitioned for unit. She has no interaction with the employees at the Graduate Center and does not work in the building. Accordingly, I find that she is excluded from the unit because she does not work at the Graduate Center.

Brenda Levin also works as a part-time employee and her title is "development officer" for CUNY-TV. Together with Isaacson, she develops strategies for fundraising. She is the liaison to the Advisory Board, which she helped create. Accordingly, the record demonstrates that she formulates and effectuates management policies and is aligned with management.

Finally, at the Office of Special Events, Anne Kuite is the assistant director. The record does not reveal how often Kuite is independently responsible for coordinating the activities at a special event. Persico's description of her duties was vague and conclusory and, therefore, the record is insufficient to decide her status as a managerial employee.

Accordingly, I therefore find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

If a majority of the employees in the professional voting group (b), *infra*, indicate a choice to be included in a unit with the non-professional employees, the following employees will constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employed by the Employer at the Graduate Center; but excluding the employees at the Child Development and Learning Center, all confidential employees, guards, and supervisors as defined in the Act.

If, on the other hand, a majority of the employees in the professional voting group (b), *infra*, do not vote for inclusion, the following two groups of employees will constitute separate units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

(a) All full-time and regular part-time non-professional employees employed by the Employer at the Graduate Center; but excluding all confidential employees, guards, professional employees, and supervisors as defined in the Act.

(b) All full-time and regular part-time employees employed by the Employer at the Graduate Center; but excluding all confidential employees, guards, and supervisors as defined in the Act.

IV. Direction of Election

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and regulations.⁶¹ Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of the Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁶²

⁶¹ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20© of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

⁶² In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **July 6, 2004**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in

In each case separate elections shall be conducted in voting groups (a) and (b) described above.

The employees in the non-professional voting group (a) in each case shall vote whether or not they desire to be represented for collective bargaining purposes by the Professional Staff Congress/City University of New York.

The employees in the professional voting group (b) in each case will be asked two questions on their ballots:

(1) Do you desire to be included in the same unit as non-professional employees of the Employer for collective bargaining purposes?

(2) Do you desire to be represented for collective bargaining purposes by Professional Staff Congress/City University of New York?

If a majority of the employees in voting group (b) vote "yes" to the first question, indicating a choice to be included in a unit with the non-professional employees, the group will be so included. The votes on the second question will then be counted with the votes of the non-professional voting group (a) to decide the representative for the entire unit. If, on the other hand, a majority of the professional employees in voting group (b) do not vote for inclusion, these employees will not be included with the non-professional employees, and their votes on the second question will be separately counted to decide whether they want to be represented in a separate professional unit.⁶³

Date at New York, New York

This 29th day of June 2004

/s/ Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁶³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **July 13, 2004**.